

Applicants strongly traverse the withdrawal of claim 20. The rationale for withdrawing this claim, which was provided for the first time in the current Office Action, is completely unsupportable by the factual history of the prosecution of this case. More specifically, the current Office Action states that claim 20 is withdrawn because it "claims a stiffening bead between the other elongated edge and the slots which defines a non-elected species as stated in the applicant's specification 'In one embodiment, a stiffening bead is located between the other elongated edge and the slots.'" (emphasis added). The assertion that the structure of claim 20 is directed to "a non-elected species" is completely contrary to the factual record of the prosecution history in this case because the structure of claim 20 is what is shown and described in connection with Figs. 12 and 13, which are two of the specific figures identified by the Examiner as being part of the elected species. A more detailed review of the prosecution history of this case is appropriate. IN the Office Action April 23, 2002 (Paper No. 1), the Examiner made a restriction requirement requiring an election between inventions of Group I (claims 1-12) and Group II (claims 13-30), and if the Group II claims were elected, an election between Group A (claims 13-28) and Group B (claims 29 and 30) and an election of species grouped by the Examiner as

Figs. 1-3 and 10-13,

Figs. 4, 5 and 10-13,

Figs. 6-8 and 10-13, and

Figs. 9-13.

Thus, by the Examiner's own terms, the structure shown in Figs. 12-13 and recited in claim 20 is included in all of the species. In response to the restriction requirement, Applicants, with traverse, elected the claims of Group II (claims 13-30), the claims of Group A (claims 13-28) and species of Figs. 1-3 and 10-13. Thus, Applicants elected the groups that included claim 20 and elected the species that included the figures showing the structure recited in claim 20. Thus, very much contrary to the assertion in the current Office Action, claim 20 is drawn to the species that was elected and this is indisputably shown by the factual historical record of this prosecution. Furthermore, as part of the factual historical record, the Examiner has never made an election requirement that would have required the Applicants to choose the structure recited in claim 20 and shown in Figs. 12 and 13 as being non-elected. Accordingly, there is absolutely nothing in this case that supports the assertion made by the Examiner in the current Office Action. While not as detailed as the foregoing discussion, Applicants specifically stated in their last response (Amendment "C" filed April 16, 2004) that claim 20 clearly read on the elected invention and species identified in Applicants' Response filed under certificate of mailing dated May 20, 2002. Because the factual record on this issue is so clear and was previously pointed out to the Examiner in this case to no avail, it is requested that the Examiner review

this matter with the Examiner's supervisor Henry Bennett and that a telephone interview be conducted between the undersigned, the Examiner and the Examiner's supervisor should the decision to withdraw claim 20 be maintained in any future Office Action.

Applicants respectfully traverse the rejection of claims 18 and 34 as unpatentable under §103 over Yasuhiko Patent No. JP 05099581 in view of Shigenaka et al U.S. Patent No. 5,617,916. The rejection is improper because it does not appear to apply to the rejected claims. More specifically, the rejection asserts that Yasuhiko discloses all of the claimed invention with the exception of providing slots that have **flange free edges** brazed to the tube runs, and then relies on Shigenaka et al for disclosing fins that have slots with **flange free edges** brazed to the tube runs. However, these assertions in the rejection do not apply to claim 18 because claim 18 does not recite **flange free edges** brazed to the tube runs. Accordingly, the rejection does not appear to apply to claim 18. In this regard, Applicants note that even though claims 18 and 34 were not rejected in the prior Office Action, the language of the current rejection appears to have been copied from the prior Office Action because it is identical to the language used in rejecting claims 17, 14, 19, 31 and 32 in the prior Office Action. To further this conclusion, claim 18 characterizes the fins as being curved at locations between the slots, but this structure is not acknowledged or addressed in the Office Action, and neither Yasuhiko nor Shigenaka et al disclose

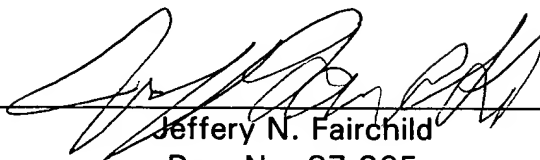
this structure. Rather, Shigenaka is directed towards radial fins that do not extend between tubes and Yasuhiko discloses angled fins that extend between the tubes rather than curved fins as recited in claim 18. Claim 34 also characterizes the fins as being curved at locations between the slots and accordingly for this same reason the rejection does not appear to apply to claim 34. However, it should be noted that claim 34 does recite slots having flange free edges brazed to the tube runs. Accordingly, because the rejection does not appear to be directed towards 18 and 34 and, even if the rejection were directed towards claims 18 and 34, the rejection is improper because the references fail to show all of the structural limitations recited in claims 18 and 34, the rejection should be withdrawn and the claims allowed.

Claims 21-26 depend from claim 18, which is believed to be allowable and which is generic to the elected species and the alleged species of Figs. 4 and 5 which are read on by claims 21-26. Accordingly, in view of the apparent allowability of claim 18, an action on the merits with an indication for allowability for claims 21-26 should be in order.

In view of the foregoing, Applicants respectfully request reconsideration of the rejection of claims 18 and 34, and the withdrawal of claims 20-30, and a telephonic interview with the Examiner and the Examiner's supervisor should the Examiner determine that the withdrawal of claim 20 should be maintained in the next Office Action.

Respectfully submitted,

WOOD, PHILLIPS, KATZ,
CLARK & MORTIMER

By 
Jeffery N. Fairchild
Reg. No. 37,825

April 16, 2004

500 West Madison Street
Suite 3800
Chicago, IL 60661-2511
(312) 876-1800